

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DECLARATION OF DAVID
SCHAEFER IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

**Note on Motion Calendar:
July 1, 2022**

Oral Argument Requested

I, David Schaefer, under penalty of perjury under the laws of the United States, state
and declare as follows:

1. I am an Officer and Director of Defendant Phoenix Digital Group LLC as well
as one of the individual Defendants in the above captioned matter and have
knowledge of the facts stated herein.
2. Phoenix Digital Group LLC is a Delaware Limited Liability Company that
once operated a website known as "Aimjunkies.com."
3. Neither I nor Phoenix Digital Group LLC has never accessed any website
owned, operated or controlled by Plaintiff Bungie, Inc.

- 1 4. Neither I nor Phoenix Digital Group LLC has ever played or otherwise
2 participated in any computer game offered or otherwise made available by
3 Phoenix Digital Group LLC.
- 4 5. Neither I nor Phoenix Digital Group LLC ever downloaded, reviewed, read,
5 “accepted,” “clicked-on” or otherwise agreed to the “Limited Software License
6 Agreement” that Plaintiff Bungie Inc. asserts in this action.
- 7 6. Neither I nor Phoenix Digital Group LLC ever consented to be bound by the
8 terms of the “Limited Software License Agreement” that Plaintiff Bungie Inc.
9 asserts in this action.
- 10 7. I do not personally design, develop write or otherwise create software for
11 providing advantages in playing computer games, otherwise referred to by
12 Bungie as “cheat software.”
- 13 8. I have never personally designed, developed written or otherwise created
14 software for providing advantages in playing computer games, otherwise
15 referred to by Bungie as “cheat software.”
- 16 9. Phoenix Digital Group LLC does not engage in designing, developing, writing
17 or otherwise creating “cheat software.”
- 18 10. Phoenix Digital Group LLC has never engaged in designing, developing,
19 writing or otherwise creating “cheat software.”
- 20 11. Instead, Phoenix Digital Group LLC is engaged in the business of marketing
21 “cheat software” created by others who are not employees, directors, officers
22 or otherwise directly related with Phoenix Digital Group LLC. In all cases, the
23 “cheat software” is developed by third parties without help or input by either
24 me or Phoenix Digital Group LLC. Phoenix Digital Group LLC is simply a
25 distributor of “cheat software” developed by others.
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- 1 12. Phoenix Digital Group LLC does not possess, and has never possessed source
2 code for any game developed by Plaintiff Bungie Inc., including source code
3 for "Destiny 2."
- 4 13. Phoenix Digital Group LLC does not possess, and has never "reverse
5 engineered" any source code for any game developed by Plaintiff Bungie Inc.,
6 including source code for "Destiny 2."
- 7 14. Attached as Exhibit A is a true and correct copy of a November 11, 2021 email
8 I sent to Plaintiff's counsel, William Rava, before retaining our current counsel
9 and during efforts to settle this matter without the expense and delay of formal
10 litigation.
- 11 15. In my November 11, 2021 email, my references to "making cheats" refers to
12 my activities in providing legal cheat software to others, not literally to writing
13 code for such software.
- 14 16. I do not own property in the State of Washington, nor do I have any personal
15 or business accounts in the State of Washington. I conduct no business in the
16 State of Washington.

17
18 Dated June 9, 2022.

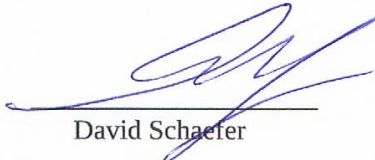
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21 David Schaefer
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EXHIBIT A

Case No. 21-CV-0811-TSZ

(Exhibit A to Declaration of David Schaefer)

Subject: Fw: Bungie vs AimJunkies
From: Dave Dwight <d7958@hotmail.com>
Date: 6/6/22, 1:12 PM
To: Phil Mann <mannlaw@comcast.net>

From: Dave Ricky-Bobby
Sent: Thursday, November 11, 2021 7:46 AM
To: WRava@perkinscoie.com <WRava@perkinscoie.com>
Cc: kevin@martinapc.com <kevin@martinapc.com>
Subject: Bungie vs AimJunkies

Will:

First i want to make clear the views expressed in this email are not representing any of the other litigants' in this lawsuit or Phoenix Digital Group. Just me David Schaefer.

I appreciate your communications with our council regarding the suit you have brought against us. I feel that in some ways our position is not being clearly communicated with you and i want to make clear our positions on this subject. Our council is advising us to get council in Washington and respond to this in the courts since we cannot seem to get where we need to go up to this point. This is my last attempt to get to a place where we can end this amicably for BOTH PARTIES.

First of all, I do not appreciate the bullying tone of the communications. I am well aware of our legal positions and fully aware of the consequences of our actions. Given that there is no existing case law on this subject you are assuming a lot of liberties that have not been proven you have at your disposal. Also, given the manner in which your customer acquired the information they have is a matter for legal interpretation/litigation, but I digress.

I want to take a step back to the beginning-When MSC out of Los Angeles contacted us with a cease and desist for D2, we complied with it. We have documentation proving that and have provided that information proving that fact. My question is and I would present it to the court, why you would go beyond this? Is it because you can? Would a judge after seeing this proof align himself/herself with your position if they see this proof? I am aware at the time i responded that we were selling the site and moving on. That did not come to fruition but is factually correct. The buyer wants us to give it away since its running negative cash flow.

Understand we are a small business and have tax documentation to prove when we were selling D2 cheat in 2020 that the company was upside down. Were we getting rich off of selling D2 cheat?? Do we have assets to satisfy a monetary judgement? NO, WE DO NOT. You're trying to get money that is not there and i will not agree to payments when we are operating negative. It is financially untenable. Do you think any of the other clients have deep pockets? They do not. Their renters, they have no real assets either.

As far as revealing our customer information i have to ask you. Is it illegal to own a gun or is it illegal to use it in a robbery? Your client already has countermeasures in place to detect cheaters. If you have not found them with your countermeasures. Giving you that information only gives your client a biased reason to take punitive action against people who have purchased our software and may

have never ever used it in game which is not a violation of EULA to purchase. How would the court look at that? There could possibly be some movement by us on the topic but with the stonewall on everything else its just another problem with your response.

Lastly and this is on a personal level.....

I am fully aware of who and what Perkins, Coie is. I'm either ignorant or stupid to not be intimidated by what you're doing.

Understand when you were in high school i was making cheats, when you were in college and law school i was making cheats. When this litigation is over and you've moved on to private practice, i will still be making cheats. You just have to decide if it is in your client's best interest to back a pit bull in a corner or to come correct and have an honest and fair negotiation. If you bend us over i can promise you a settlement done in any way will not yield the result your looking for in the long run. Conversely, I can 100% guarantee you with or without a legal agreement if we say were not making a cheat again, we are not.

Ask MSC about our dealings with them on Call of Duty. We were served with a cease and desist and have complied since them. They never jammed us up for financial or customer records. Pushing our face in the mud on D2 is not going to ultimately get your client where he needs/wants to go. You have shown us your playbook so we know the rules of the game now. Our company has a strong reputation of doing what we say were going to do. Our word is the only thing we have in this business that separates us from the rest of the dregs in the business. Also were not a group of 8-year old's in our grandma's basement you can intimidate.

It is obvious you and your client believe that litigation is going to fix the core problems your client has with their game. It will not. I can assure you in my communications with your other litigants on other cases they have other plans. Also, your client has introduced new countermeasures in their game which are a joke and have been circumvented for quite some time.

So, my point is if you want to push our face in legal and financial mud you have that option. OR you can work WITH us to eliminate cheaters from the D2 game. The choice is up to you and your client.

Kevin Martin is still your point of contact regarding the settlement. If you have any questions your welcome to call/email me also.

David Schaefer
831-247-0741